

Order

Michigan Supreme Court
Lansing, Michigan

September 29, 2010

Marilyn Kelly,
Chief Justice

141149

Michael F. Cavanagh
Maura D. Corrigan
Robert P. Young, Jr.
Stephen J. Markman
Diane M. Hathaway
Alton Thomas Davis,
Justices

LINDA S. MAHER,
Plaintiff-Appellant,

v

SC: 141149
COA: 287309
Saginaw CC: 05-056101-DM

JAMES P. MAHER,
Defendant-Appellee.

On order of the Court, the application for leave to appeal the April 20, 2010 judgment of the Court of Appeals is considered and, pursuant to MCR 7.302(H)(1), in lieu of granting leave to appeal, we REVERSE that part of the judgment of the Court of Appeals holding that the appreciation realized from the Smith Barney investment account during the marriage was the defendant's separate property. The appreciation of an actively managed account during the parties' marriage is marital property. *Dart v Dart*, 460 Mich 573, 585 n 6 (1999), citing *Hanaway v Hanaway*, 208 Mich App 278 (1995), and *Reeves v Reeves*, 226 Mich App 490 (1997). The Court of Appeals held that neither plaintiff nor defendant actively handled or managed the account. However, because the trial court did not make a finding of fact as to whether the account was actively managed by either party, we REMAND this case to the Saginaw Circuit Court for full consideration of the issue, and for any further proceedings not inconsistent with this order. In all other respects, leave to appeal is DENIED because we are not persuaded that the remaining question should be reviewed by this Court.

We do not retain jurisdiction.



s0922

I, Corbin R. Davis, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

September 29, 2010

Corbin R. Davis

Clerk